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SUBJECT: NORMALLY COMPLIANT LESOTHO SENATE REJECTS CONSTITUTIONAL AMENDMENT

REF: 2007 MASERU 439 AND PREVIOUS

11. SUMMARY: In a stunning demonstration of rare political independence, on March 19 Lesotho's Senate, the upper house of the nation's Parliament, defeated a controversial constitutional amendment which had been approved by the elected lower house of the Parliament on February 8. Local observers often label the Senate, a mixed body of hereditary chiefs and political appointees, as a rubber stamp for the government's political initiatives. However, the controversial "Sixth Amendment," which a majority of Senators viewed as an effort to retroactively settle political arguments stemming from the 2007 National Assembly election in favor of the government, was met with heated debate and ultimate rejection. In the end, the episode demonstrated that democratic debate and a willingness to stand up to political power is alive in Lesotho, and that constitutional checks and balances play a healthy role in the Mountain Kingdom. END SUMMARY.

What is the Sixth Amendment?

12. A proposed "Sixth Amendment" to Lesotho's constitution was a wide ranging five-page document addressing a number of banal administrative issues (i.e., the titles of certain cabinet members) in addition to one highly controversial point -- the handling of court cases regarding the outcome of elections. The Government's version of the amendment included language allowing decisions made on electoral matters by the High Court, Lesotho's equivalent of the Supreme Court, to be appealed to the Court of Appeal, an ad hoc body of mostly South African judges assembled when needed.

Why was it controversial?

13. The Senate viewed this proposed amendment as a political strategy by the governing Lesotho Congress for Democracy (LCD) party to protect its interests in a current case before the High Court dealing with the distribution of parliamentary seats following the February 2007 national election. The case, if won by the opposition MFP party, could force a reallocation of National Assembly seats, conceivably lowering the LCD's parliamentary block to just over the 60 seats required for a majority. Anticipating a High Court decision favorable to the opposition, the GOL's constitutional amendment would create an appeal process for electoral cases which currently proceed no further than the High Court. GOL sources claim that the amendment would benefit all political parties. According to several Senators who spoke with Emboffs, however, the upper house rejected what they saw as an attempt by the LCD to protect its own narrow political and election interests by tampering with the constitution.

Democratic Debate Lives in Lesotho

¶4. COMMENT: The Senate's move to block the "Sixth Amendment" demonstrates that Lesotho's constitutional system of checks and balances, often derided as ineffectual by Lesotho's political opposition, can actually have an impact. While it appears awkward to claim that a body mainly composed of hereditary chiefs defended Jeffersonian principals, most observers agree that the Senate's actions demonstrated that lively democratic debate persists in Lesotho. While March 19 was not a particularly happy day for the government LCD, it was a memorable day for Lesotho's democratic process. END COMMENT.

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